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**“JESUS TOOK THE FIVE LOAVES AND TWO FISH AND
LOOKED UP INTO THE SKY AND GAVE THANKS:
THEN HE BROKE OFF PIECES FOR HIS DISCIPLES TO
SET BEFORE THE CROWD. AND EVERYONE ATE AND ATE.”¹**

Aaron Skinner^{*}

INTRODUCTION

The popular Bible parable of Jesus Christ feeding a crowd of around five thousand people is often taught to children in Sunday school. However, the story seems appropriate in relationship to the modern day problems that face the portions of the world's population that depend on fish for sustenance and nutrition.² Clearly, international marine fisheries constitute one of the most urgent resource problems facing the world today because they are rapidly depleting.³ The forecast for future generations enjoying the bounties of the seas is dismal. Unlike the Bible parable, our contemporary society does not have a person who can miraculously turn two fish into enough food to feed the masses.

¹ See *The Living Bible* at Luke 9:16

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² Jonathan Peacey, *The Marine Stewardship Council Fisheries Certification Program: Progress and Challenges*, 119 Alternburg Gardens, LondonSW111JQ, UK, at <http://oregonstate.edu/dept/iifet/2000/papers/peacey.pdf> (noting that "...fish is an increasingly popular source of protein and lifestyle food choice").

³ Christopher J. Carr, Harry N. Scheiber, *Dealing with a Resource Crisis: Regulatory Regimes for Managing World's Marine Fisheries*, 21 STAN. ENVTL. L.J. 45, 46 (Jan. 2002).

Therefore, concerned environmentalists, fisherman, and various governments have sparked a new generation of fish providers including an organization that will affect the future of marine fisheries, the Marine Stewardship Council (MSC). This paper will provide an overview of the MSC's attempt to prevent the marine fisheries industry from being caught in the net by providing a certification process that will hopefully stimulate fishery policy changes. Part I address the important "fish facts" about the effects on fisheries, and explain the need for the MSC's creation. Part II discusses the general attributes of the MSC. Part III discusses how the MSC rulemaking process operates, while Part IV describes the substantive rules of the MSC. Further, Part V addresses the MSC use and enforcement of its rules for the certification process. Part VI discusses the how the MSC system relates to other legal systems. Finally, the paper concludes that the MSC will become successful by continuing to spread its own organizational net of creating social change by gaining notoriety and reliability to catch customers in the future.

I. FISH FACTS

To understand the importance of the MSC, one must fully comprehend why the MSC was established. The MSC was established to create an alternative solution to fighting the depletion of the world's seafood, which is the most important renewable food source in the world.⁴ However, people have a common misconception that seafood provides an endless source of food.⁵ However, as it is hard to image that the vast oceans with seemingly endless aquatic life could ever be threatened. Dr. Carl Safina states, "[t]he next century will... witness the heretofore

⁴ Marine Stewardship Council [hereinafter MSC], *About MSC* [hereinafter About MSC] (2002), at http://www.msc.org/html/content_462.htm. (noting most of the literature on the MSC is available at the MSC home webpage at www.msc.org).

⁵ See generally Habitat Media, *Empty Oceans, Empty Nets* (2000), at <http://www.habitatmedia.org/EOEN/index.html>.

unthinkable exhaustion of the ocean's natural ability to satisfy humanity's demand for food from the seas."⁶

The decrease in fish but increase in the human population's dependency on fish is an increasing problem. The world's population of six billion people continues to grow by 60 million every year.⁷ Globally, over 200 million people depend on fisheries for their diets.⁸ Approximately 100 million people in developing countries' livelihood depend on the consumption of Fish products.⁹ "The consumption of fish and fish products has risen by 240% since 1960."¹⁰ From 1960 to 1996 fish production for the rising human population has risen from 27 million to 91 million tonnes a year.¹¹ Estimates say by 2010 the demand for fish products could reach 120 million tonnes a year.¹² "The Food and Agriculture Organization of the United Nations, (FAO), reports that fish provides 29% of total animal protein consumed by Asians, 19% by Africans, and 8% by Latin Americans."¹³ Also, oil-rich fish contain fatty acids that have been proven to beneficially affect health problems such as, heart disease, high blood pressure, kidney disorders and autoimmune diseases.¹⁴ Despite the rise in the human population and its need for fish, there are other factors contributing to the decline of fisheries in the world.

The FAO estimates that 70% of the world's commercially important marine fish stock has been severely damaged.¹⁵ More

⁶ See *Id.*

⁷ MSC, *supra* note 5, *Oceans Position Paper* [hereinafter *Oceans Position Paper*] (1999), at http://csdngo.igc.org/oceans/oceans_msc.htm (noting that the *Oceans Position Paper* was submitted to the Seventh Session of the United Nations Commission on Sustainable Development "CSD-7").

⁸ See MSC, *supra* note 5, *Fish Facts* [hereinafter *Fish Facts*] (2002), at http://eng.msc.org/html/content_528.htm.

⁹ See *id.*

¹⁰ *Fish Facts*, *supra* note 9.

¹¹ *Id.* (noting that a tonne is a metric ton or 1,000kg).

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

¹⁵ See *Oceans Position Paper*, *supra* note 8.

specifically, of the 70% of the damaged fish stocks, 25% are under exploited, 47% are fully fished, 15% are over exploited, and 10% are depleted or slowly recovering.¹⁶ These statistics exemplify why 15 of the world's 17 major fisheries suffer depletion.¹⁷ Technology also acts as a major influence in the depletion of fisheries.¹⁸ Electronic advances, such as sonar, have given fisherman the ability to know exactly where the fish are located.¹⁹ Fishermen are equipped with bigger, faster boats with bigger, stronger nets, which allows them to fish deeper waters and over rocky bottoms.²⁰ Technological advancements equip modern day fisherman with the ability to haul in as much fish in an hour as a typical boat of the sixteenth century could land in a season.²¹ Like "shooting fish in a barrel," fisherman's methods are more adept at catching huge amounts of fish.²²

There are four basic methods in catching fish.²³ First, the "gillnet" is a vertically suspended mesh net that allows fish to pass through, but catches their gills.²⁴ Second, the "hook-and-line" method, which is the traditional way of catching fish, uses baited hooks to snare the fish.²⁵ However, unlike the typical view of a person fishing with a fishing pole, the method of Longlines uses hundred of "hook-and-lines", which stretches for miles to snare its

¹⁶ Fish Facts, *supra* note 9.

¹⁷ Habitat Media, *supra* note 6.

¹⁸ See generally Fish Facts, *supra* note 9; see also Oceans Position Paper, *supra* note 8; Habitat Media, *supra* note 6.

¹⁹ Habitat Media, *supra* note 6.

²⁰ *Id.*

²¹ See Northeast Fisheries Science Center, *A Bouillabaisse of Fascinating Facts About Fish* (1985), at <http://www.nefsc.noaa.gov/faq/fishfaq6.html> (noting a modern factory ship can capture nearly 100 tons of fish in an hour).

²² Seafood Choices Alliance, *Gearing Up for Good Seafood* (Afishianado Spring2003), at <http://www.seafoodchoices.com/newsletter/spring2003/feature.1.shtml>.

²³ See *id.*

²⁴ *Id.*

²⁵ *Id.*

fish.²⁶ Third, the method of trawling uses a sock-shaped net that captures everything in its path.²⁷ Finally, the method of trolling uses several single, unconnected hooked-and-baited lines to catch its fish.²⁸ These methods of catching vast amounts of fish also cause an immense amount of “bycatch, further depleting fish stocks.”²⁹

“Bycatch” is the incidental, non-targeted fish an aquatic life that is discarded by fisherman.³⁰ “Bycatch” includes sea turtles, seabirds, sharks, dolphins, and other unintended aquatic life, which when caught, are just thrown overboard.³¹ “Bycatch” results in over 27 million tons of aquatic life caught each year.³² Catching vast amounts of their targeted fish and “bycatch,” the fishing industry is causing the alarming trend of “fishing down the food web.”³³ This alarming trend is destroying the aquatic equilibrium because by catching the larger, more desired fish representing the top of the food chain, the fishing industry have had to start catch the “next in line” fish.³⁴ The desecration of fisheries is starting to require an immediate response to curtail the problem.

Economic competition also contributes to depletion of fishery industries stocks.³⁵ The worldwide fishing industry is valued at \$131 billion.³⁶ The international fishing industry’s quest for financial gain has caused them to ignore the problems facing

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Id.*

³⁰ Habitat Media, *supra* note 6.

³¹ *See id*; *see also* Seafood Choices Alliance, *supra* note 23.

³² Habitat Media, *supra* note 6 (noting that the volume of “bycatch” caught is four times greater than the annual catch of the entire United States fleet combined).

³³ *See* Habitat Media, *supra* note 6.

³⁴ *Id.* (noting that the fish industry had begun to market smaller fish that are the normal prey of the larger fish, which will eventually led to the collapse of the global fisheries).

³⁵ *See generally* Fish Facts, *supra* note 9.

³⁶ *Id.* (noting that the value of the fishing industry was \$131 billion as of 2000).

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the global fisheries.³⁷ “The greatest problem facing fisheries today, as most commentators will assert, is that there are simply too many vessels chasing too few fish.”³⁸

The decline of fish and the threat of decreased ability to catch fish in the future have finally forced the fishing industry to act.³⁹ Actions of better management benefit the fishing industry because the FAO predicts another 10 to 20 million tonnes of fish could be caught annually.⁴⁰ Further, the growing industry of aquaculture is positively affected the world’s fisheries.⁴¹ Aquaculture is the method of “farming” of “growing” fish in ponds.⁴² The success of aquaculture has led to over a quarter of all fish consumed worldwide to originate from “farmed fish.”⁴³ “There is some evidence that aquaculture is going to take pressure off the major fisheries in the ocean—but it’s got to be more sustainable than it is now.”⁴⁴ Although aquaculture is helping curtail the depletion of fish stocks, it is only one of many such tools that can increase the world’s fisheries. The creation of the MSC has and will be an effective tool that can positively affect the world’s fisheries.

II. GENERAL ATTRIBUTES OF THE MSC

The MSC was created by the World Wildlife Fund (WWF)⁴⁵ along with corporate fish giant, Unilever, in an attempt to reverse the continued decline of the world’s fisheries.⁴⁶ The

³⁷ See Habitat Media, *supra* note 6.

³⁸ Carr-Scheiber, *supra* note 4, at 56.

³⁹ See Habitat Media, *Farming the Seas* [hereinafter Habitat Media II], at <http://www.habitatmedia.org/part2.html>.

⁴⁰ See Oceans Position Paper, *supra* note 8; see also Fish Facts, *supra* note 9.

⁴¹ Habitat Media II, *supra* note 40.

⁴² *Id.*

⁴³ *Id.*

⁴⁴ *Id.* (citing Dr. Jason Clay, a world leading expert in marine biology).

⁴⁵ The WWF is an environmental organization.

⁴⁶ MSC, *supra* note 5.

MSC was legally ratified in February 1997 and became a fully independent, global, non-profit organization in 1999.⁴⁷ Unilever is an Anglo-Dutch seafood giant that is the world's largest buyer of seafood.⁴⁸ As the largest buyer of seafood, Unilever buys 25% of the world's white fish, which it sells through Birdseye, Gordons, and other companies that it owns.⁴⁹ The MSC has brought together a broad coalition of over 100 organizations and institutions from around the world including governments and private corporations.⁵⁰

The MSC seeks to accomplish changes in fisheries in a number of ways. The MSC's mission is to "safeguard the world's seafood supply by promoting the best environmental choice" available.⁵¹ The MSC's approach to improving marine fisheries is to certify specific fisheries rather than actual products.⁵² The MSC is also buying back boats to reduce the quantity of boats, setting responsible and appropriate catch limits, banning certain fishing practices, and introducing better management regimes.⁵³ MSC certification based its standards on the FAO's "Code of Conduct," which was used to draft the MSC's "Principles and Criteria for Sustainable Fishing" (PCSF).⁵⁴ The MSC uses the concept of market incentives and consumer purchasing power to encourage fisheries to seek MSC certification.⁵⁵ Once certified, a fishery's

⁴⁷ See *id.*; Ocean Position Paper, *supra* note 8; About MSC, *supra* note 5.

⁴⁸ See BC Salmon, *Questions & Answers: Marine Stewardship Council* [hereinafter BC Salmon], at http://www.bcsalmon.ca/bcmc/msc_01.html; see also About MSC, *supra* note 5.

⁴⁹ Compare Oceans Position Paper, *supra* note 8, with Carr, *supra* note 4, at 74.

⁵⁰ About MSC, *supra* note 5.

⁵¹ MSC, *Vision Mission Values*, at http://www.msc.org/html/content_482.htm.

⁵² Carr-Schieber, *supra* note 4, at 74.

⁵³ Oceans Position Paper, *supra* note 8.

⁵⁴ See MSC, *Fisheries* [hereinafter Fisheries], at http://www.msc.org/html/content_463.htm.

⁵⁵ Carr-Schieber, *supra* note 4 at 75 (noting that MSC seeks to "tap into the purchasing power of 'green' consumers").

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product carries the MSC certified logo on their products.⁵⁶ Since MSC is a young organization, its “logo is not yet found on cans, nor does it decorate fish stores windows or restaurant menus.”⁵⁷ To date, the MSC has certified seven fisheries with twenty others in the certification process.⁵⁸ Out of the MSC certified fisheries, over 150 certified products carry the MSC logo in supermarkets.⁵⁹ With the ability to buy a product carrying the MSC logo, a consumer can have peace of mind knowing their purchase came from a well-managed source that is helping save fish stock populations.⁶⁰

III. RULEMAKING PROCESS

The WWF and Unilever’s frustration with failed government attempts to maintain sustainable international fisheries led to the development of the MSC in a unique collaboration never attempted before.⁶¹ The MSC sought global consultation as an important vehicle through which to implement its policies and ultimately strive to accomplish their goals.⁶²

Four main groups conduct MSC rulemaking: (1) the MSC Staff; (2) MSC Board; (3) the Technical Advisory Board (TAB); and (4) the Stakeholder Council.⁶³ All four main groups work in

⁵⁶ *Id.*

⁵⁷ A. J. Godknecht, *The Marine Stewardship Council*, at http://www.sharkinfo.ch/SI2_00e/msc.html.

⁵⁸ International Foundation for the Conservation of Natural Resources: Fisheries Committee (hereinafter cited as IFCNR), *Short Takes: January–March 2003*, available at <http://fisheries.ifcnr.com/article.cfm?NewsID=424>.

⁵⁹ MSC, *MSC Flying the Sustainable Flag at World’s Largest Seafood Fair*, available at http://www.msc.org/html/ni_74.htm.

⁶⁰ Laura Cooper and Michael Sutton, *The Marine Stewardship Council: Sustainable Fisheries through Consumer Choice* (Abstract 1998), at <http://www.umich.edu/~esupdate/library/98.07-08/cooper.html>.

⁶¹ MSC, *Promoting sustainable fisheries* [hereinafter Panda], at http://www.panda.org/about_wwf/what_we_do/marine/what_we_do/sustainable_fisheries/market/msc.cfm.

⁶² *Id.*

⁶³ MSC, *Governance*, at http://www.msc.org/html/content_474.htm.

continual cohesion of seeking each other's advice and information as well as watching over each other to ensure that the MSC runs properly.⁶⁴ The MSC has a staff of 23 people and is based in London, Seattle and Sydney.⁶⁵ MSC Staff must have the following: "knowledge of fisheries, ... including post harvest aspects; degree in fisheries; environmental management of natural resource management; or equivalent work experience; ... demonstrated ability to work with the stakeholders; ... knowledge of the ... MSC Standard; knowledge of international trade issues associated with seafood; ... and oral and written communication skills."⁶⁶ The MSC staff must also have the ability to work unsupervised from a home office and must be willing to travel.⁶⁷ The Chief Executive, Brendan May, heads the MSC staff.⁶⁸ The Chief Executive reports to the MSC Board (Board of Trustees), which comprises of fifteen board members.⁶⁹

The MSC Board members are nominated in a personal capacity for a three-year term.⁷⁰ Once nominated, the MSC Board members are automatically trustees of the organization and represent the MSC in public.⁷¹ The Chairman of the Board is the retired Honorable John Gummer.⁷² The MSC Board's responsibilities are as follows: "approving plans and targets; approving and implementing strategy; ensuring that the MSC is properly financed; appointing chief members of the Board, Chair, Committees and the Executive; endorsing the accreditation of certifiers; publicly

⁶⁴ Cooper and Sutton, *supra* note 61.

⁶⁵ See About MSC, *supra* note 5; see also MSC, Staff, at http://www.msc.org/html/content_478.htm.

⁶⁶ Jobs for Week(s) of May 1-15, 2003, available at http://www.apo-observers.org/Jobs/jobs_5-10-03.html.

⁶⁷ *Id.*

⁶⁸ MSC, Board [hereinafter Board], at http://www.msc.org/html/content_472.htm Summary of November 2003 Board Meeting Link.

⁶⁹ See Board, *supra* note 69.

⁷¹ *Id.*

⁷² *Id.*

accounting for expenditure and income.”⁷³ The MSC Board also receives information from the Technical Advisory Board (TAB).⁷⁴

The TAB has 11 members that advise the main MSC Board on all relevant matters.⁷⁵ The MSC Board appoints the TAB, but the TAB members appoint their own chairperson.⁷⁶ The TAB Chair is Dr. Keith Sainsbury.⁷⁷ The TAB has the primary role of setting and reviewing the MSC Standards, controlled logo licenses, and chain of custody procedures.⁷⁸ After reviewing a subject matter, the TAB gives the Stakeholders Council their recommendation before submitting them to the MSC Board. The TAB will consider any feedback from the Stakeholders Council and then give the MSC Board their final recommendation.⁷⁹

The Stakeholders Council (STC) “is a well-defined and balanced stakeholder body of 30-50 members fulfilling specific roles and acting as a point of reference, participation, liaison and representation.”⁸⁰ The STC can report directly to the MSC Board and the Board must consider the STC concerns.⁸¹ The STC meets annually, however due to the War in Iraq, the 2003 annual meeting had to be postponed until August 2003 in Sydney, Australia.⁸² The meetings take place in an open convention for those interested, but the MSC Board, TAB, and STC are the ones who mainly give

⁷³ *Id.*

⁷⁴ MSC, *Technical Advisory Board* [hereinafter TAB], at http://www.msc.org/html/content_475.htm.

⁷⁵ *Id.*

⁷⁶ *Id.*

⁷⁷ *Id.*

⁷⁸ *See id.*; *see also* MSC, *Governance*, at http://www.msc.org/html/content_474.htm; *See infra* diagram 1 of governance.

⁷⁹ *Id.*

⁸⁰ MSC, *Stakeholder Council* [hereinafter Stakeholder Council], at http://www.msc.org/html/content_477.htm.

⁸¹ *Id.*

⁸² *Compare id.*, with MSC, *Fish4Thought* [hereinafter Fish4Thought], (Issue 7 Apr. 2003), at http://www.msc.org/html/content_460.htm and MSC, *Stakeholder Council*, at http://www.msc.org/html/content_477.htm (noting the minutes are available for the August 2003 meeting) .

reports.⁸³ However, the yearly meetings are not the only time outsiders get a chance to be heard. The MSC conduct a series of workshops in which it invites different countries to participate.⁸⁴ The workshops look to refine and develop the MSC standards of what makes a sustainable fishery while influencing governments to take action in saving depleted fisheries.⁸⁵ The MSC's governance structure was reviewed and implemented in June 2001.⁸⁶ For governance clarification see appendix 1.⁸⁷

IV. SUBSTANTIVE RULES OF THE MSC

Compared to other stewardships,⁸⁸ the MSC "proposes a new approach incorporates incentive structures to bring benefits to fisherman, fish processors, traders, retailers and consumer through the adoption of a more sustainable approach to fisheries exploitation."⁸⁹ The MSC brought together a coalition of supporters from over 20 countries representing over 100 organizations to find the best way to implement sustainable fisheries.⁹⁰

At the heart of its new approach for making fisheries more sustainable, the MSC only has one set of core rules, the PCSF.⁹¹ Dr. Chet Chaffee defines the sustainability of fisheries as meaning; "the fish are around year after year for as many years as you can

⁸³ Stakeholder Council, *supra* note 81.

⁸⁴ Carl-Christian Schmidt, *ACP-EU Fisheries Research Report Number 5*, at <http://www.cordis.lu/inco2/src/acprep33.htm>.

⁸⁵ *Id.*

⁸⁶ MSC, *Governance*, (2002), at http://www.msc.org/html/content_474.htm.

⁸⁷ See *infra* App. A for MSC governance structure.

⁸⁸ See *Generally* NOAA Fisheries, at <http://www.nmfs.noaa.gov/> (noting the Microsoft PowerPoint presentation discusses the 132 year old, National Oceanic and Atmospheric Administration (NOAA), a part of the United States Department of Commerce and extensively uses other 100 laws for its authorities).

⁸⁹ Oceans Position Paper, *supra* note 8.

⁹⁰ About MSC, *supra* note 5.

⁹¹ See *id.*; see also Fisheries, *supra* note 55; see *supra* text accompanying note 56.

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count [and] always at the same levels.”⁹² The PCSF are intended to build upon and complement the existing work of international institutions such as the FAO.⁹³ “The PCSF are further designed to recognize and emphasize that management efforts are most likely to be successful in accomplishing the goals of conservation and sustainable use of marine resources when there is full co-operation among the full range of fisheries stakeholders, including those who are dependent on fishing for their food and livelihood.”⁹⁴ The criteria for the PCSF are based on the best scientific data and latest knowledge about marine environments as well as the FAO’s “Code of Conduct.”⁹⁵ Over a two-year time span, the global consultation process took the criteria gathered and in conjunction with relevant stakeholders developed three basic principles to the PCSF.⁹⁶

Principle 1 of the PCSF outlines with the condition of the fish stocks.⁹⁷ Principle 1 states, “[a] fishery must be conducted in a manner that does not lead to over-fishing or depletion of the exploited population and, for those population that are depleted, the fishery must be conducted in a manner that demonstrably leads to their recovery.”⁹⁸ Principle 1 intends to continue the high productivity of the fish stocks.⁹⁹ The important factor in continuing high productivity is to ensure that fisheries do not seek the wealth

⁹² Habit Media, *Empty Ocean, Empty Nets Interview Transcripts* [hereinafter *Habitat Media Interview*], available at <http://www.habitatmedia.org/EOEN/interviews.html> (noting Dr. Chet Chaffee is the Manager of the Marine Conservation Program at Scientific Certification Systems in Mountain View, California).

⁹³ Oceans Position Paper, *supra* note 8.

⁹⁴ MSC, *Principles and Criteria for Sustainable Fishing*, 5 [hereinafter PCSF] at, <http://216.239.37.104/search?q=cache:YLri6gKnPd4J:www.msc.org/assets/docs/fishery%2520certification/MSCPrinciples%26Criteria.doc+MSC,+Principles+and+Criteria+for+Sustainable+Fishing&hl=en&ie=UTF-8>.

⁹⁵ See Fisheries, *supra* note 55; see also MSC, *Promoting Sustainable Fisheries*, *supra* note 62.

⁹⁶ See MSC, *Promoting sustainable fisheries*, *supra* note 62; see also Oceans Position Paper, *supra* note 8.

⁹⁷ Fisheries, *supra* note 55.

⁹⁸ PCSF, *supra* note 94, at 7.

⁹⁹ *Id.*

of vast short-term fishing, rather sacrifice in some way for the betterment of future fish stocks.¹⁰⁰ The MSC feels that if fisheries were to sacrifice their practices of over-fishing, then exploited populations could be maintain and restored back to an abundant supply.¹⁰¹ Principle 1 has three criterions.¹⁰² First, a “fishery shall be conducted at catch levels that continually maintain the high productivity of the target population(s) and associated ecological community relative to its potential productivity.”¹⁰³ Second, “[w]here the exploited population are depleted, the fishery will be executed such that recovery and rebuilding is allowed to occur to a specified level consistent with the precautionary approach and the ability of the populations to produces long-term potential yields within a specifies time frame.”¹⁰⁴ Third, “fishing is conducted in a manner that does not alter the age or genetic structure or sex composition to a degree that impairs reproductive capacity.”

Principle 2 of the PCSF outlines with the “impact[] of the fishery on the marine environment.”¹⁰⁵ Principle 2 states, “fishing operations should allow for the maintenance of the structure, productivity, function and diversity of the ecosystem (including habitat and associated dependent and ecologically related species) on which the fishery depends.”¹⁰⁶ Principle 2 intends to encourage the management of fisheries from an ecosystem perspective under a system designed to assess and restrain the impacts of the fishery on the ecosystem.”¹⁰⁷ Reflecting on importance of communication between fisherman and their management, Dr. Chet Cahffee said, “reporting that information back to the management so there’s a discussion between those who fish and those who manage” is

¹⁰⁰ *Id.*

¹⁰¹ *Id.*

¹⁰² *Id.*

¹⁰³ *Id.*

¹⁰⁴ *Id.*

¹⁰⁵ *Fisheries, supra* note 55.

¹⁰⁶ PCSF, *supra* note 94, at 8.

¹⁰⁷ *Id.*

crucial to the management of fisheries.¹⁰⁸ Principle 2 also has three criterions.¹⁰⁹ First, a “fishery is conducted in a way that maintains natural functional relationships among species and should not lead to trophic cascades or ecosystem state changes.”¹¹⁰ Second, a “fishery is conducted in a manner that does not threaten biological diversity at the genetic, species or population levels and avoid or minimizes mortality of, or injuries to endangered, threatened or protected species.”¹¹¹ Third, the criteria states, “[w]here the exploited population are depleted, the fishery will be executed such that recovery and rebuilding is allowed to occur to a specified level within specified time frames, consistent with the precautionary approach and considering the ability of the population to produce long-term potential yields.”¹¹²

Principle 3 is the third and last section of the PCSF, which outlines the fishery management systems.¹¹³ Principle 3 states, “[t]he fishery is subject to an effective management system that respects local, national and international laws and standards and incorporates institutional and operational frameworks that require use of the resource to be responsible and sustainable.”¹¹⁴ Principle 3 intends to ensure an institutional and operational frameworks will implement “Principles 1 and 2” according to the size and scale of the fishery.¹¹⁵ Principle 3 has 17 management system criterions.¹¹⁶ The criteria stresses, among other things, an organization’s responsibility to establish specific objectives.¹¹⁷ The criteria

¹⁰⁸ Habit Media Interview, *supra* 92.

¹⁰⁹ PCSF, *supra* note 94, at 8.

¹¹⁰ *Id.*

¹¹¹ *Id.*

¹¹² *Id.*

¹¹³ Fisheries *supra* note 55.

¹¹⁴ PCSF, *supra* note 94, at 9.

¹¹⁵ *Id.*

¹¹⁶ *Id.*

¹¹⁷ *Id.* (noting Principle 3’s objectives includes: (1) compiling with legal and customary rights of those who are dependent on fish; (2) an appropriate system to resolve disputes; (3) providing economic and social incentives to

also specifies strategies that will demonstrate the following: setting catch levels; identify appropriate fishing levels; rebuilding depleted fish populations; establish no-take zones; make use of fishing gear and practices that will avoid “bycatch;” and avoiding lost fishing gear, oil spills, and on board spoilage of the fish caught.¹¹⁸ The “criteria by which the MSC Principles will be implemented will be reviewed and revised as appropriate in light of relevant new information, technologies and additional consultations.”¹¹⁹

V. CERTIFICATION AND CHAIN OF CUSTODY PROCESS

The reason for preliminary success of the MSC is based on companies’ quest to be certified.¹²⁰ Understanding the PCSF is crucially important to any company that wishes to be certified by the MSC.¹²¹ The MSC created the certification methodology to accredit “certification bodies undertaking assessments of organizations against the MSC PCSF, and as the certification methodology to be used by those bodies.”¹²² The MSC Certification Program three key roles are: (1) *standard setting* simply uses the MSC’s PCSF; (2) *accreditation* requires the MSC to assess and continually monitor the fishery; and (3) *logo licensing* requires that once certified a client follows the correct procedures in uses the trademark MSC Logo.¹²³

those who contribute to a sustainable fishery; and (4) incorporate a research plan to better understand how a current fishery in affecting the marine environment).

¹¹⁸ See generally *id.*, at 9, 10.

¹¹⁹ PCSF, *supra* note 94 at 7 n. 2.

¹²⁰ Peacey, *supra* note 3, at 1.

¹²¹ See The Biodiversity Economics Library, *The Marine Stewardship Council*, available at <http://www.biodiversityeconomics.org/business/links-15-00.htm>.

¹²² MSC, *Certification Methodology* [hereinafter *Certification Methodology*], (2002), at http://www.msc.org/html/content_505.htm.

¹²³ Peacey, *supra* note 3, at 3.

The purpose of the certification methodology is fourfold. First, “[t]o establish a consistent certification methodology to enable all MSC Accredited certification bodies to operate in a consistent and controlled manner.”¹²⁴ Second, “provide[s] the transparency that is required of an international accreditation body for it to be credible with potential stakeholders, including governments, fishery managers, certification bodies, suppliers of fish and fish products, non-governmental organizations and the general public.”¹²⁵ Third, “to provide documentation designed to assure long-term continuity and consistency of the delivery of MSC certification.”¹²⁶ Finally, “to specify a system that ensures the MSC Logo on fish or fish products is a credible assurance that the fish is derived from a well managed and sustainable fishery, as defined by the MSC Principles and Criteria and ultimately the MSC claim.”¹²⁷ When a given company understands the PCSF and the certification methodology and wishes to become a client of the MSC, the certification process begins.¹²⁸

A companies or corporation seeking MSC approval must first voluntarily conform to the PCSF before applying to become a MSC client.¹²⁹ Once a company or corporation’s policies are in accordance with the MSC standards, it can then petition the MSC, starting the application process.¹³⁰ The MSC does not certify a company itself.¹³¹ Instead, the MSC approves an independent certification company to certify a participating company.¹³² The prospective client can choose from the MSC’s list of independent certification companies.¹³³ The list of approved certification

¹²⁴ *Id.*

¹²⁵ *Id.*

¹²⁶ *Id.*

¹²⁷ *Id.*

¹²⁸ BC Salmon, *supra* note 49, at 2,3.

¹²⁹ *Id.*

¹³⁰ *Id.*

¹³¹ Carr-Scheiber, *supra* note 4, at 74, 75.

¹³² *Id.* at 75.

¹³³ BC Salmon, *supra* note 49, at 2.

companies includes management agencies, group of interest parties, associations, or individual certifying companies.¹³⁴

The prospective client undergoes the certification process once an independent certification company is agreed upon.¹³⁵ “Full certification involved a three-person evaluation team of expert and the certifier.¹³⁶ The evaluation team’s job is to observe a fishery’s standard operations stemming from the boat to the buyer.¹³⁷ The evaluation team collects information using performance indicators and scoring guidelines to analyze whether the information and assessment collected on a fishery conforms to the PCSF.¹³⁸ The analyzed information will establish whether a chain of custody has been executed as per the PCSF.¹³⁹

The chain of custody is important to ensure customers that the fish they are buying was truly caught by a certified MSC client.¹⁴⁰ “Valid chain-of-custody procedures are a key aspect of any credible product-labeling [sic] program [sic].”¹⁴¹ The chain of custody goes so far to inspect the final purchaser so a restaurant can ensure that prepared fish do not get mixed in with other “non-certified fish”.¹⁴² Simply explained, the “chain of custody assessment and certification are designed to ensure that only products originating from a certified fishery will carry the MSC Logo.”¹⁴³

¹³⁴ *Id.* at 2,3.

¹³⁵ *Id.* at 3.

¹³⁶ *Id.*

¹³⁷ *See id.*; *see also* Peacey, *supra* note 3, at 3.

¹³⁸ *See* Peacey, *supra* note 3, at 3; *see also* MSC, *Performance Criteria & Scoring Guidepost Against the Marine Stewardship Council Principles & Criteria: Western Australian Rock Lobster Fishery Issue* [hereinafter *Performance Criteria & Scoring Guidepost*] (Nov. 1999), at http://www.scs-certified.com/PDFS/fish_Waussilobperfindicatorpdf.

¹³⁹ Peacey, *supra* note 3, at 3.

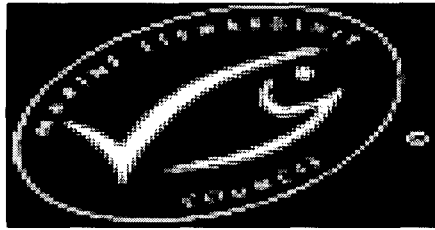
¹⁴⁰ Peacey, *supra* note 3, at 3.

¹⁴¹ MSC, *Chain of Custody-Certification Process*, at http://www.macalister-elliott.com/msc/info/cofcprocess_en.pdf.

¹⁴² *Id.*

¹⁴³ Peacey, *supra* note 3, at 3.

The use of the MSC Logo is why companies or corporations strive for MSC certification.¹⁴⁴



IV. THE MSC's RELATIONSHIP TO OTHER LEGAL SYSTEMS

The MSC can arguably have a relationship to a private law making organization. Lucy Taylor would likely argue the MSC is a "social movement dynamic."¹⁴⁵ Similar to a social movement, the MSC is establishing relationships with governments to inspire change.¹⁴⁶ The MSC currently urges governments to "become party to the 1995 UN Agreement on Straddling Fish Stocks and High Migratory Fish Stocks... to demonstrate that they take the alarming decline in fish stocks seriously."¹⁴⁷ The MSC further asks governments to help stop the depletion of fish stocks by: (1) "[r]educing subsidies which encourage unsustainable fishing;¹⁴⁸ (2)

¹⁴⁴ MSC, *Use of the MSC Logo* [hereinafter MSC Logo] (2002), available at http://www.msc.org/html/content_468.htm.

¹⁴⁵ See generally Lucy Taylor, *Symposium on Globalization at the Margins: Perspectives on Globalization From Developing States*, 7 IND. J. GLOBAL LEGAL STUD. 269, 275-286 (Fall 1999).

¹⁴⁶ Compare *id.* at 279, 280 (noting social groups work with governmental agencies lobbying, exposing violations of laws; to invoke change rather than practicing alternative solutions such as demonstrations), with Oceans Position Paper, *supra* note 8, at 2,3 (noting the MSC is beginning to work with governmental agencies).

¹⁴⁷ Oceans Position Paper, *supra* note 8, at 2 (noting as of 1998, only 18 had joined the UN agreements).

¹⁴⁸ Oceans Position Paper, *supra* note 8, at 2 (quoting "[g]overnments continue to pay tens of billions of dollars each year in subsidies to support over-capitalized commercial fishing fleets").

[r]eviewing destructive fishing practices with a view to ending their use; (3) [d]eveloping robust monitoring, control and surveillance programs [sic]; (4) [d]eveloping or subscribing to credible and reliable fisheries data gathering systems; (5) [p]roducing coastal zone management plans; (6) [p]roducing fishmeal/oil from sustainable fish resources or producing them from the by-products of fish processing; and (7) [s]etting clear targets for fisheries sustainability with their EEZ's [Exclusive Economic Zone] and subjecting them to review which determine their efficacy."¹⁴⁹ The MSC's point of setting sustainability limits within a governments' EEZ is important since 95% of the world's fishing is done within the national 200-mile zones.¹⁵⁰ Therefore, nations such as the United States could take heed of the MSC standards to protect future fish stocks.

The MSC lobbying actions should be taken seriously by the United States. As a nation with vast coastlines and the world's largest EEZ, the United States has some of the best fishing areas in the world.¹⁵¹ Although, the United States has taken some action to preserve the marine environment, such as "Congress' intervention to define dolphin-safe tuna eco-labels", more needs to be done.¹⁵² Comparable to the MSC, the United States has the National Oceanic and Atmospheric Administration (NOAA).¹⁵³ Similar to the MSC, the NOAA's mission is the "[s]tewardship of living marine resources for the benefit of the Nation through their science-based conservation and management and promotion of the health of their environment."¹⁵⁴ Further the NOAA's goals are: (1) to build sustainable fisheries; (2) recover protected species; and (3) sustain healthy coasts.¹⁵⁵ Unlike the MSC, the United States government governs the NOAA since it is part of the United States

¹⁴⁹ Oceans Position Paper, *supra* note 8, at 3.

¹⁵⁰ See Godknecht, *supra* note 58.

¹⁵¹ *Id.*

¹⁵² Carr-Scheiber, *supra* note 4, at 76.

¹⁵³ NOAA Fisheries, *supra* note 88.

¹⁵⁴ *Id.*

¹⁵⁵ *Id.*

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Department of Commerce.¹⁵⁶ The NOAA also derives authority from laws, such as the “Endangered Species Act” and the “Clean Water Act.”¹⁵⁷ The NOAA has the power to force fisheries to cooperate since it has authoritative power to enforce the laws of the United States. Comparatively, the MSC does not have the authority over any fisheries to force change, except for the few fisheries that they have certified. The MSC’s influence however comes from the support of numerous governments and organizations like the International Social & Environmental Accreditation & Labels (ISEAL) and the International Organization for Standardization (ISO).¹⁵⁸ However, despite overwhelming support for the MSC, the MSC has been criticized and challenged.¹⁵⁹

The MSC has been criticized and challenged by a few organizations and individuals. The National Fisheries Institute (NFI), a United States commercial fishing industry, developed an organization named Responsible Fisheries Society (RFS). The NFI had felt “left-out” of the MSC process as they felt the MSC was more of a European organization. However, both companies have a PCSF and were started by a fishing corporation giant. Some people have argue that argued that no organization can remain completely independent, especially those which were created by a large corporation, such as Unilever.¹⁶⁰ The WWF has been criticized for joining forces with Unilever to start the MSC because prior to the alliance, Unilever was one the main contributors towards fisheries’ depletion.¹⁶¹ The Earth Crash organization has a fish to fry because the MSC certified the New

¹⁵⁶ *Id.*

¹⁵⁷ *Id.* (noting the NOAA is governed by over 100 laws).

¹⁵⁸ See Godknecht, *supra* note 58.

¹⁵⁹ Carr-Scheiber, *supra* note 4, at 75.

¹⁶⁰ See Earth Crash, *Documenting the Collapse of a Dying Planet*, (Mar. 2001), at <http://www.eces.org/articles.static/98506800072188.shtml>; see also Steger, U, Raedler, G., *Marine Stewardship Council (A): Is a Joint Venture Possible Between “Suit and Sandals”* (2000), at <http://www.wri.org/wri/meb/guide/0333.html>; FishBytes, *The FC and the MSC* [hereinafter FishBytes], at www.fisheries.ubc.ca.

¹⁶¹ Steger-Raedler, *supra* note 161.

Zealand fishery.¹⁶² Earth Crash argues that the MSC certification was done in error because the New Zealand fishery has been linked to killing around six thousand seals in ten years and roughly one thousand seabirds.¹⁶³ Earth Crash contends the MSC did not stand by its PCSF because they knew about the seals and seabirds but certified the fishery by saying the fishery needed “minor corrective action required.”¹⁶⁴ Earth Crash stated, “[w]e think that people worried about the environment and those worried about animal welfare will feel revolted at this attempt at green wash in the face of facts.”¹⁶⁵ Still, other organizations have felt that the increase in MSC popularity has caused them to forget about the “little guy” sponsors that helped start the agency.¹⁶⁶

CONCLUSION

Since its founding, the MSC has experience overwhelming support.¹⁶⁷ Companies such as Whole Foods™ have been proud to sell MSC products.¹⁶⁸ Whole Foods stated, “[o]ur partnership with the Marine Stewardship Council underscores our commitment to support international efforts to encourage the sustainability of fish stocks and the marine environment.”¹⁶⁹ The rapid increase in worldwide support is evident that the MSC is here to stay. Although, a young organization, the MSC will continue to grow and with growth will come the learning process and change. The only thing the MSC needs to remember is the goals they have set for the marine environment. So long as the MSC is uncorrupted by the pressures of wealth and power and stays true to its PCSF, the MSC will benefit the worldwide society. Further, so long as the

¹⁶² FishBytes, *supra* note 161.

¹⁶³ Earth Crash, *supra* note 161.

¹⁶⁴ *Id.*

¹⁶⁵ *Id.*

¹⁶⁶ FishBytes, *supra* note 161.

¹⁶⁷ Panda, *supra* note 62.

¹⁶⁸ Whole Foods, *Whole Foods Market Joins Marine Stewardship Council*, (1999), at http://www.wholefoodsmarket.com/issues/list_seafood.html.

¹⁶⁹ *Id.*

MSC's governance structure remains a balance and a cordial administration, the MSC can continue to have success by keeping all interest parties involved.

The pressures of the global economy and the rise in consumer awareness will bolster the MSC into a position of importance sooner than later. The MSC will become an important organization in the near future because the call of reform of fisheries will increase as the fish stocks decrease. When the time comes for the MSC's will no longer be a fish in the sea. Instead the MSC will become a well known an influential organization that will truly better the marine environment and make a fish in the water more safe than a fish out of water. In the near future, the MSC will become a provider that will take two fish and multiply them to feed the masses.

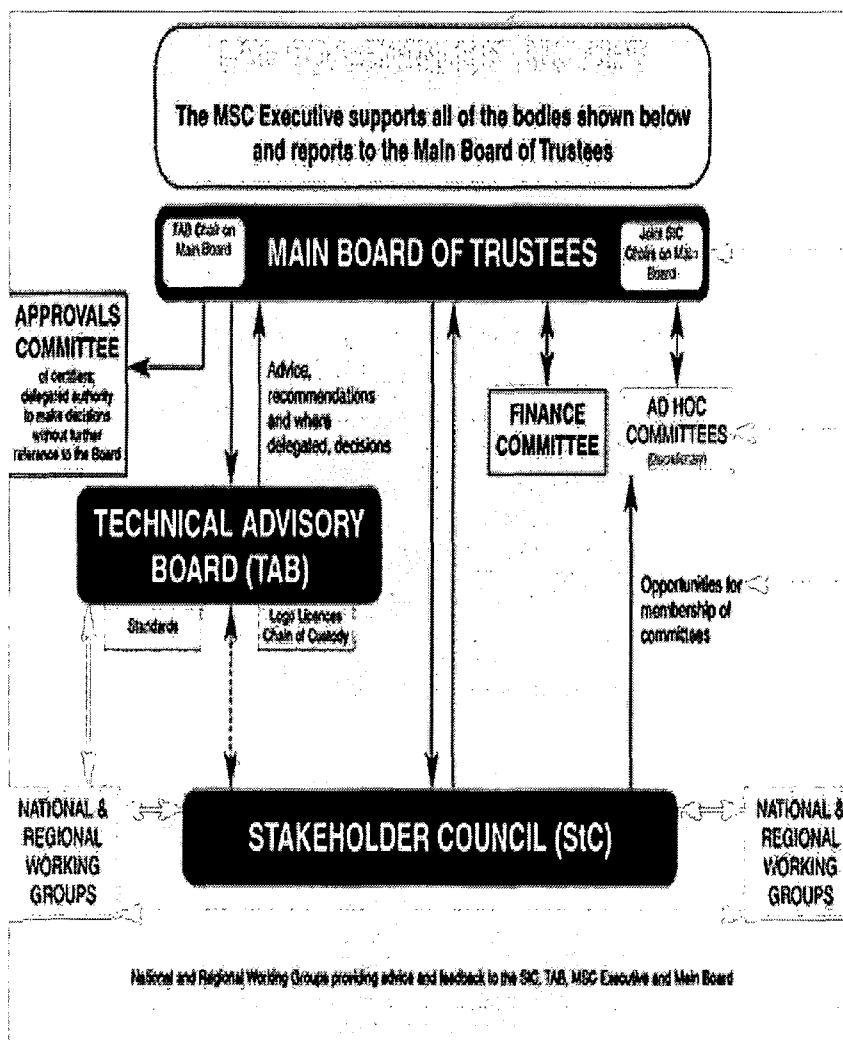


Figure 1. This flow chart illustrates the MCS's governance structure.¹⁷⁰

¹⁷⁰

MSC, *Governance*, (2002), at http://www.msc.org/html/content_474.htm.

